

**PREHEARING ORDER OF COMMISSION**

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In the matter of Objection No. 013-019 filed by Local Union No. 101 of the International Union of Operating Engineers (Objector) on April 6, 2006, to Annual Wage Order No. 13, pertaining to the Building Construction wage rate for the occupational title of Operating Engineers in the Missouri Counties of Greene – Section 039, Lawrence – Section 055, Taney – Section 110, Ozark – Section 077, and Vernon – Section 112 and the Heavy Construction wage rate for the occupational title of Operating Engineers in the Missouri Counties of Greene – Section 039 and Webster – Section 116; issued by the Division of Labor Standards, Department of Labor and Industrial Relations, filed with the Secretary of State: March 10, 2006.

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**I. Prehearing Conference**

On May 4, 2006, pursuant to 8 CSR 20-5.010(3)(A), a prehearing conference was convened on the above-referenced Objections for the purpose of aiding in the disposition of the hearing. Present at the prehearing conference were:

Assistant Attorney General Michael Pritchett, counsel for the Division of Labor Standards (Division);  
Allen E. Dillingham, for the Division;  
James J. Boeckman, for the Division; and  
Martin W. Walter, counsel for Objector, Local Union No. 101 of the International Union of Operating Engineers

Susan Venturella is the Commission's designated representative and presided over the prehearing conference.

Counsel for Objector announced Objector's intention to withdraw:

- Objection No. 14 to the Building Construction wage rate for the occupational title of Operating Engineer in Lawrence County; and,
- Objection No. 19 to the Heavy Construction wage rate for the occupational title of Operating Engineer in Webster County.

**II. Prefiled Testimony and Exhibits**

In accordance with the procedure to be followed at the hearing, as set out in 8 CSR 20-5.010(4), the following evidence was submitted:

**For Objector:**

The sworn statement of Ed Riedesel, Business Representative for Local Union No. 101 of the International Union of Operating Engineers, and accompanying exhibits.

**For the Division:**

The prepared direct testimony of Allen E. Dillingham, Director of the Missouri Division of Labor Standards, and referenced exhibits.

### **III. Issue for the Hearing**

Objector challenges the Division's determinations that:

- the prevailing Building Construction wage rate for Operating Engineers (Group III) in the Counties of Greene and Taney is \$17.85 / \$9.27 per hour;
- the prevailing Building Construction wage rate for Operating Engineers (Group II) in the Counties of Ozark and Vernon is \$14.94 / \$8.60 per hour; and,
- the prevailing Heavy Construction wage rate for Operating Engineers (Group II) in the County of Greene is \$19.93 / \$8.60.

Objector proposes a Building Construction wage rate for Operating Engineers (Group III) in the Counties of Greene and Taney of \$18.45 / \$9.27. Objector proposes a Building Construction wage rate for Operating Engineers (Group II) in the Counties of Ozark and Vernon of \$19.05 / \$9.27. Objector asserts that the Division has not considered hours (disputed hours) worked at the rates set forth in the collective bargaining agreement between Builders Association (Springfield Area) and Operating Engineers Local No. 101.

Objector proposes a Heavy Construction wage rate for Operating Engineers (Group II) in the County of Greene of \$21.02 / \$9.30. Objector asserts that the Division has not considered hours (disputed hours) worked at the rates set forth in the collective bargaining agreement between Associated General Contractors of Missouri and Operating Engineers Local No. 101.

Objector has submitted payroll records and/or contractor reports allegedly substantiating that the collective bargaining agreement rates are the rates at which the plurality of the hours were worked for the counties and occupational titles identified above. Objector does not dispute that Objector did not report the disputed hours it now seeks to substantiate to the Division before the Division filed Annual Wage Order No. 13. Nonetheless, Objector contends that the disputed hours are timely reported because the Prevailing Wage Law allows hours to be reported and substantiated through the objection process. Alternatively, Objector argues that the Division's refusal to accept hours after the Division-established deadlines is a change in policy that should only be applied prospectively.

The Division responds that the wage rates identified in Annual Wage Order No. 13 reflect the wage rates for which the most hours were reported for the county and occupational title indicated as of the expiration of the reporting deadline, including grace period, established by the Division. The Division argues the disputed hours are not properly includible in the determination of the prevailing wage because Objector did not report the disputed hours before the deadline for reporting said hours as established by the Division. The Division asserts that the inclusion of hours reported after the deadline is inappropriate in that the allowance of late reporting:

- results in unnecessary delay and expense in finalizing the annual wage order, thereby, increasing both the public and private cost of the wage survey process;
- creates a disincentive to timely reporting; and,
- provides an advantage to entities who disregard the deadlines and file late vis-à-vis those entities who respect the deadlines and report no hours after the deadline.

#### **IV. Hearing**

The hearing before the Commission is scheduled for Monday, May 22, 2006, at 10:00 a.m. and if necessary, for Tuesday, May 23, 2006, at 10:00 a.m., in Jefferson City, Missouri. The location of the hearing is the Department of Labor and Industrial Relations Building, 3315 West Truman Boulevard, in the second floor conference room.

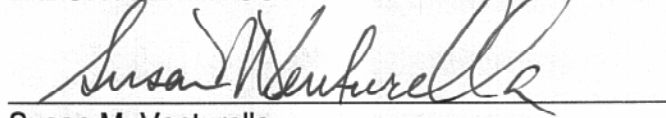
If there are no factual issues in dispute between the parties, the Commission will entertain a joint request to consider the legal issues presented upon written briefs. Such request will be granted provided the request is accompanied by a written stipulation of fact executed by all parties.

"No direct evidence, other than the testimony and documents filed at the prehearing conference, will be allowed at the hearing, except at the discretion of the Commission." 8 CSR 20-5.010(4)(B)4.

This Order is prepared in accordance with 8 CSR 20-5.010(3)(B) and is hereby executed by the Commission's designated representative.

Given at the City of Jefferson, State of Missouri, this 11<sup>th</sup> day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Susan M. Venturella", is written over a horizontal line.

Susan M. Venturella  
Designated Representative